

(Additional counsel on following page)

JESSICA R. PERRY (SBN 209321)  
[jperry@orrick.com](mailto:jperry@orrick.com)  
MELINDA S. RIECHERT (SBN 65504)  
[mriegert@orrick.com](mailto:mriegert@orrick.com)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
1000 Marsh Road  
Menlo Park, CA 94025-1015  
Telephone: +1 650 614 7400  
Facsimile: +1 650 614 7401

KATHRYN G. MANTOAN (SBN 239649)  
[kmantoan@orrick.com](mailto:kmantoan@orrick.com)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669  
Telephone: +1 415 773 5700  
Facsimile: +1 415 773 5759

Attorneys for Defendant  
Apple Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

V

APPLE INC.

Defendant.

Case No. 23-cv-4597-EMC

**[PROPOSED] ORDER GRANTING  
DEFENDANT APPLE INC.'S MOTION  
TO DISMISS PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

Dept: Courtroom 5, 17th Floor  
Judge: Honorable Edward M. Chen  
Date: February 8, 2024  
Time: 1:30 p.m.

1 KATE E. JUVINALL (SBN 315659)  
[kjuvinall@orrick.com](mailto:kjuvinall@orrick.com)  
2 ORRICK, HERRINGTON & SUTCLIFFE LLP  
631 Wilshire Blvd., Suite 2-C  
3 Santa Monica, CA 90401  
Telephone: +1 310 633 2800  
4 Facsimile: +1 310 633 2849

5 RYAN D. BOOMS (SBN 329430)  
[rbooms@orrick.com](mailto:rbooms@orrick.com)  
6 ORRICK, HERRINGTON & SUTCLIFFE LLP  
1152 15th Street, N.W.  
7 Washington, D.C. 20005-1706  
Telephone: +1 202 339 8400  
8 Facsimile: +1 202 339 8500

9 Attorneys for Defendant  
Apple Inc.

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1 Pending before the Court is Defendant Apple, Inc.'s Motion to Dismiss Plaintiff's First  
 2 Amended Complaint. Having considered the relevant papers and pleadings on file with the Court  
 3 in this matter, as well as the arguments of counsel, the Court determines:

- 4 1. The Court **DISMISSES, with prejudice**, Plaintiff's First Claim under the Sarbanes-Oxley  
     5 Act ("SOX") because Plaintiff fails to (1) identify the misrepresentations that support her  
     6 claim, (2) allege Apple's alleged conduct constituted mail fraud, wire fraud or bank fraud,  
     7 or violated any securities laws that can form the predicate of a SOX claim, and (3) allege  
     8 she complained to a supervisor or other individual at Apple with authority to investigate, or  
     9 that Apple knew of her complaint to the Securities and Exchange Commission.
- 10 2. The Court **DISMISSES, with prejudice**, Plaintiff's Second Claim under the Dodd-Frank  
     11 Wall Street Reform and Consumer Protection Act because it is derivative of her SOX claim.  
     12 A claim under Dodd-Frank requires that Plaintiff allege a violation actionable under SOX,  
     13 which Plaintiff has not properly alleged.
- 14 3. The Court **DISMISSES, with prejudice**, Plaintiff's Third Claim under the California Bane  
     15 Civil Rights Act because Plaintiff fails to allege facts showing that Apple interfered with  
     16 Plaintiff's constitutional or statutory rights; or that such interference was accompanied by  
     17 actual or attempted threats, intimidation, or coercion.
- 18 4. The Court **DISMISSES, with prejudice**, Plaintiff's Fourth Claim under the California  
     19 Ralph Civil Rights Act because Plaintiff does not allege facts suggesting any threat of  
     20 violence by Apple or that any conduct by Apple was based on her political affiliation or  
     21 other protected characteristic.
- 22 5. The Court **DISMISSES, with prejudice**, Plaintiff's Fifth Claim under Racketeer  
     23 Influenced and Corrupt Organizations Act ("RICO") because the Private Securities  
     24 Litigation Reform Act ("PSLRA") bars it. Moreover, Plaintiff fails to allege Apple used or  
     25 invested money it received from supposed racketeering to injure her, and because she fails  
     26 to plead the existence of an "enterprise" separate and distinct from Apple or a pattern of  
     27 racketeering activity.
- 28 6. The Court **DISMISSES, with prejudice**, Plaintiff's Sixth Claim asserting strict liability for

1                   ultrahazardous activities because it is time-barred and, even if it were not, operating a  
2                   facility on a Superfund site and operating a semiconductor facility are not ultrahazardous  
3                   activities.

4                   7. The Court **DISMISSES, with prejudice**, Plaintiff's Seventh Claim under California Labor  
5                   Code section 1102.5 because Plaintiff fails to allege any facts that would establish a  
6                   violation of the sole underlying statute she identifies as a predicate for this claim (California  
7                   Labor Code section 435).

8                   8. The Court **DISMISSES, with prejudice**, Plaintiff's Eighth Claim under California Labor  
9                   Code section 98.6 predicated on an alleged violation of Labor Code section 96(k) because  
10                   Plaintiff fails to allege she was terminated for asserting a recognized constitutional right.

11                   9. The Court **DISMISSES, with prejudice**, Plaintiff's Eleventh Claim for private nuisance  
12                   under California Civil Code section 3479 because it is time-barred.

13                   Accordingly, Defendant Apple Inc.'s Motion to Dismiss is **GRANTED**, and Plaintiff's  
14                   first, second, third, fourth, fifth, sixth, seventh, eighth, and eleventh claims are **DISMISSED with**  
15                   **prejudice**, as set forth above.

16                   **IT IS SO ORDERED**

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Dated: \_\_\_\_\_

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19                   HON. THOMAS M. CHEN  
20                   U.S. DISTRICT COURT JUDGE

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